

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District <u>Western</u>
Name (under which you were convicted): <u>Joshua Wolf</u>		Docket or Case No.: <u>00CR165891</u>
Place of Confinement: <u>Missouri Department of Corrections, Jefferson City Corr. Center</u>		Prisoner No.: <u>1061000</u>
Petitioner (include the name under which you were convicted) <u>Joshua Wolf</u>		Respondent (authorized person having custody of petitioner) <u>v. Jay Cassidy, Warden</u>
The Attorney General of the State of		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: The Circuit Court of Boone County, Missouri, Columbia Missouri
(b) Criminal docket or case number (if you know): 00CR165891
- (a) Date of the judgment of conviction (if you know): April 20, 2001
(b) Date of sentencing: July 2, 2001
- Length of sentence: Life without parole, Life, 7 years
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: Murder, 1st Degree
Armed Criminal Action
Assault, 2nd Degree
- (a) What was your plea? (Check one)

(1) Not guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input checked="" type="checkbox"/>

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: The western District Court of Appeals

(b) Docket or case number (if you know): WD60277

(c) Result: Affirmed Convictions

(d) Date of result (if you know): 10-29-02

(e) Citation to the case (if you know): State v wolf 91 S.W 3d 636

(f) Grounds raised: • The trial court erred in denying my Motion to Suppress my Statements
• The trial court erred in overruling my Motion for Continuance.

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: The Circuit Court of Boone County

(2) Docket or case number (if you know): 03CV164994

(3) Date of filing (if you know): 3-10-03

(4) Nature of the proceeding: Rule 29.15

(5) Grounds raised: • My attorney failed to timely request and obtain an independent mental evaluation.

• My attorney failed in the motion for new trial to allege as error the trial court's denial of the motion for continuance to obtain a mental evaluation.

• My attorney failed to present the testimony of psychiatrist William S. Logan at the pretrial hearing on the motion to suppress my confession.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: Hearing Court denied post-conviction relief

(8) Date of result (if you know): 11-22-03

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: The Western District Court of Appeals

(2) Docket or case number (if you know): WD63637

(3) Date of filing (if you know): 12-24-03

(4) Nature of the proceeding: Appeal, 29.15

(5) Grounds raised: • My attorney failed to timely investigate, consult, and present the expert testimony of Dr. William Logan.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Judgment of the motion Court affirmed

(8) Date of result (if you know): 12-3-04

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: The Missouri Supreme Court

(2) Docket or case number (if you know): SC93186

(3) Date of filing (if you know): 3-7-13

(4) Nature of the proceeding: Petition for writ of Habeas Corpus

(5) Grounds raised:

• Unconstitutional sentence because I was sentenced to mandatory life without parole for a homicide I committed when I was 16 years old.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒ Relief granted in part and denied in part.

(7) Result: I was ordered to be eligible for parole when I have served

(8) Date of result (if you know): 25 Years. 3-15-16

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☒

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

On the third petition, the petition was filed in the highest court having jurisdiction. A motion for rehearing was filed on 3-28-16 and denied on 7-19-16 in light of Missouri Senate Bill 590.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: UnConstitutional Sentence in light of Miller v. Alabama.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- I am serving mandatory life without parole for a homicide I committed two months after my 16th birthday.
- No Sentencer has considered the mandatory, multifaceted constitutional requirements of Miller before giving me life without parole.
- Missouri Senate Bill does not remedy my unconstitutional sentence.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Direct appeal was final when Miller v. Alabama was decided.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Rehearing and Petition for Writ of Habeas Corpus.

Name and location of the court where the motion or petition was filed: The Supreme Court of Missouri

Docket or case number (if you know): SC93186

Date of the court's decision: 7-19-16

Result (attach a copy of the court's opinion or order, if available): original order granting parole eligibility rendered moot in light of senate bill 590.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: The denial of the Motion for Rehearing was the end of the appeal process. There was no further appeal available.

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ~~Yes~~ No ☒ No.

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Stephen C. Wilson, 2907 Independence, Ste. C, PO Box 512, Cape Girardeau MO 63702

(b) At arraignment and plea: Stephen C. Wilson, "

(c) At trial: Stephen C. Wilson, "

(d) At sentencing: Stephen C. Wilson, "

(e) On appeal: Stephen C. Wilson, "

(f) In any post-conviction proceeding: Cinda J. Eichler, Missouri Public Defender's Office, Columbia MO

(g) On appeal from any ruling against you in a post-conviction proceeding: Nancy McKerrrow, Rosalynn Koch, Missouri Public Defender's Office, Columbia MO

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: Vacate the
Petitioner's Sentences and Remand for resentencing
under State v. Hart, 404 S.W.3d 232 (MO. banc 2013)
 or any other relief to which petitioner may be entitled.

 Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
 and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
 _____ (month, date, year).

Executed (signed) on _____ (date).

Subscribed and sworn to before me this 9 day
 of Aug in the year 2016.

Chris Marks



CHRIS MARKS
 My Commission Expires:
 December 28, 2018
 Cole County
 Commission #14632295

[Signature]
 Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

N/A

IN FORMA PAUPERIS DECLARATION

See Below

[Insert appropriate court]

See enclosed motion to proceed in
Forma pauperis.